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**Jul 24 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of General Sessions  
The Honorable Walton J. McLeod, Circuit Court Judge

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Appellate Case No. 2022-001396

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THE STATE,

Respondent,

v.

ANDRES FERNANDO POSSO,

Appellant.

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**INITIAL BRIEF OF RESPONDENT**

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ATTORNEYS FOR RESPONDENT

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## STATEMENT OF ISSUES ON APPEAL

- I. S.C. Code §24-13-40 provides a trial court "must" give credit for time "served" prior to trial and sentencing and "may" give credit for time spent under pre-trial house arrest. The trial court gave Posso credit for time served while incarcerated at the detention center, but declined to give him credit for time spent under house arrest. Did the trial court abuse its discretion?

## STATEMENT OF THE CASE

A Lexington County grand jury indicted Appellant Andres Posso for two counts of Criminal Sexual Conduct with a Minor in the 2<sup>nd</sup> degree and seven counts of Criminal Sexual Conduct with a Minor in the 3<sup>rd</sup> degree. He pled guilty pursuant to North Carolina v. Alford<sup>1</sup> to two counts of CSC with a Minor 3<sup>rd</sup> degree on May 12, 2022, before the Honorable Walton J. McLeod, Circuit Court Judge. The remaining charges were dismissed. The State recommended a cap of 8 years' incarceration. Judge McLeod sentenced Posso to concurrent 8-year sentences. Judge McLeod gave Posso credit for time served at the detention center prior to his plea, but did not give him credit for time spent on house arrest. This direct appeal follows.

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<sup>1</sup> 400 U.S. 25 (1970) (recognizing validity of guilty plea entered without express admission of guilt).

## STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Jacobs, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011). A sentence will not be overturned absent an abuse of discretion when the ruling is based on an error of law. Id.

## ARGUMENT

**The trial court acted within its discretion when it declined to give Posso credit for time spent on house arrest prior to his plea**

The trial court acted within its discretion when it declined to give Posso credit for time spent on house arrest prior to his plea. This Court should affirm.

The South Carolina Code provides: "In every case in computing the time served by a prisoner, full credit against the sentence must be given for time served prior to trial and sentencing, and may be given for any time spent under monitored house arrest." S.C. Code Ann. § 24-13-40 (emphasis added). The statute, by its terms, gives trial courts the discretion to give—or not to give— credit for time spent on monitored house arrest prior to trial. See State v. Allen, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006) (explaining statute providing court "may" revoke probation vested court with discretion). The trial court did not err.

Furthermore, Posso raised no objection to the sentence to the circuit court. Plea counsel agreed it was within the trial court's discretion whether to give credit for time spent on house arrest. (Tr.p.21). Accordingly, this claim is not preserved for review. State v. Johnston, 333 S.C. 459, 462, 510 S.E.2d 423, 425 (1999) (explaining "a challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review"). This Court should affirm.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

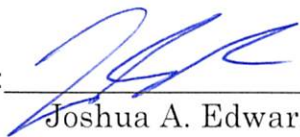
Respectfully submitted,

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BY: \_\_\_\_\_

  
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Appellant.


**PROOF OF SERVICE**

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I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Wanda Carter, Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 24<sup>th</sup> day of July, 2023.



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**From:** [Anne Mueller](#)  
**To:** [Wanda Carter](#)  
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**Bcc:** [Victim Services](#)  
**Subject:** FW: State v. Andres Fernando Posso, 2022-001396  
**Date:** Monday, July 24, 2023 5:04:00 PM  
**Attachments:** [image001.png](#)  
[Posso Andres - 2022-001396 - Initial Brief Of Respondent and Designation Of Matter \(03341297xD2C78\).PDF](#)

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My apologies. A couple of pages in the brief we just sent you were unsigned. The attached brief is fully signed.

*Anne*

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**From:** Anne Mueller  
**Sent:** Monday, July 24, 2023 4:54 PM  
**To:** Wanda Carter <WCarter@sccid.sc.gov>  
**Cc:** Scott Leverett (sleverett@sccid.sc.gov) <sleverett@sccid.sc.gov>; Josh Edwards <JEdwards@scag.gov>; Anne Mueller <amueller@scag.gov>  
**Subject:** State v. Andres Fernando Posso, 2022-001396

Good afternoon, Ms. Carter.

Attached to this email is the State's Initial Brief Of Respondent and Designation Of Matter in the above criminal appeal.

We will be filing this brief electronically using the Court's AIS One Drive System.

If you would, please confirm your receipt of our brief by return email.

Thank you for your cooperation.

Sincerely,

Anne Mueller, Legal Assistant for Attorney General Joshua A. Edwards

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